

REMARKS

In the Office Action, the Examiner rejected Claim 28 for reasons not related to patentability under 35 U.S.C. § 112. Claim 28 has been cancelled.

In the Office Action, the Examiner rejected Claim 1-3, 13, 20, 22-25, 30-32 and 34 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,554,762 to Leysieffer. Further, Claims 4-12, 14, 15, 21, 26-28, 35 and 36 were rejected under 35 U.S.C. § 103 as being unpatentable over the '762 patent in view of U.S. Patent No. 6,077,215 to Leysieffer. As to all rejections based on the '762 patent and/or '215 patent, Applicant initially reserves all options to remove either or both of such patents as prior art. In any case, however, Applicant submits that the '762 and '215 patents fail to anticipate or render obvious the pending claims.

In particular, independent Claim 1 is directed to a method for assessing the performance of a hearing aid that includes an implanted hearing aid actuator, wherein a test device that is separate from the hearing aid is externally positioned and utilized to (i) generate at least one predetermined test signal that is provided to the hearing aid, and (ii) to obtain at least one test measure of an electrical signal passing through the actuator responsive to the at least one predetermined test signal. In turn, the at least one test measure is employed to assess at least one performance parameter of the hearing aid. Various embodiments of test devices are discussed at Page 17, Line 1 through Page 33, Line 33, particularly in relation to Figs. 3 and 6, of the present application. Of note, in each of the various embodiments the test device 328, 608 is separate and apart from the semi-implantable or fully-implantable hearing aid systems described therewith, wherein in each embodiment the test device generates a test signal and obtains at least one test measure of an electrical signal passing through an implanted actuator. As may be appreciated, the use/provision of a separate test device reduces overall complexity, cost, and hearing aid requirements.

The '762 patent fails to disclose the method of Claim 1. More particularly, the '762 patent fails to disclose, *inter alia*, an arrangement in which a separate test device may be utilized to generate a test signal for use in the assessment of a performance of a hearing aid that includes an implanted hearing aid actuator. Rather, the '762 patent teaches arrangements in which test signals are generated by on-board componentry, i.e. componentry that is part of a hearing aid. For example, in the arrangements of Figs. 1, 6 and 7 of the '762 patent, an implantable hearing aid system 1 comprises an implantable electronics module 12 that includes a microcontroller 17 and signal processor 13 that provide an output used to trigger a transducer 16 or 36. See, e.g. Column 13, Lines 11-56. With respect to the Fig. 11 arrangement, the '762 patent further fails to disclose a separate test device as per the present invention. Rather, '762 patent specifically states that:

“Fig. 11 schematically shows the structure of a partially implantable hearing system . . . [that] includes a microphone 10, an electronic module 74 . . . , the power supply (battery) 30 . . . in an external module 76 . . .” Column 20, Line 64 to Column 21, Line 4.

The '215 patent also fails to disclose the method of Claim 1. In this regard, Applicant notes that the '215 patent fails to make any provision for the use of a test signal that causes the passage of an electrical signal through an actuator, much less a test device that both generates a test signal and obtains at least one test measure of an electrical signal passing through an actuator to assess the performance of a hearing aid. More generally, it is unclear from the Office Action as to how the Examiner is attempting to rely upon the '215 patent. In this regard, Applicant respectfully requests that, if any further rejections are based on the '215 patent, specific language and/or figures of the '215 patent be identified in relation to the rejections made.

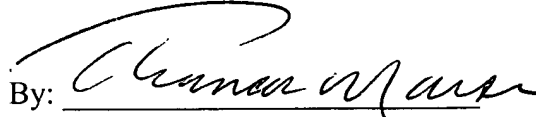
In view of the foregoing, Applicant submits that Claim 1 is allowable over the '762 and/or '215 patents. Further, dependent Claims 2-5, 7-12 and 16-18 are allowable over the '762 and/or '215 patents for the same reasons as Claim 1, and further since such claims stipulate further combinative features not disclosed or rendered obvious by the '762 and/or '215 patents.

Finally, Applicant notes the provisional obviousness-type double patenting rejections based on co-pending applications 10/083,181 and 10/082,989, as set forth in the Office Action. Applicant submits that, due to the amendments set forth hereinabove, the basis for such provisional obvious-type double patenting rejections may be obviated with respect to one or more of the claims in question. As such, Applicant requests further consideration of the claims, wherein Applicant may then address any further provisional obviousness-type double patenting rejections as may be appropriate via terminal disclaimer.

In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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